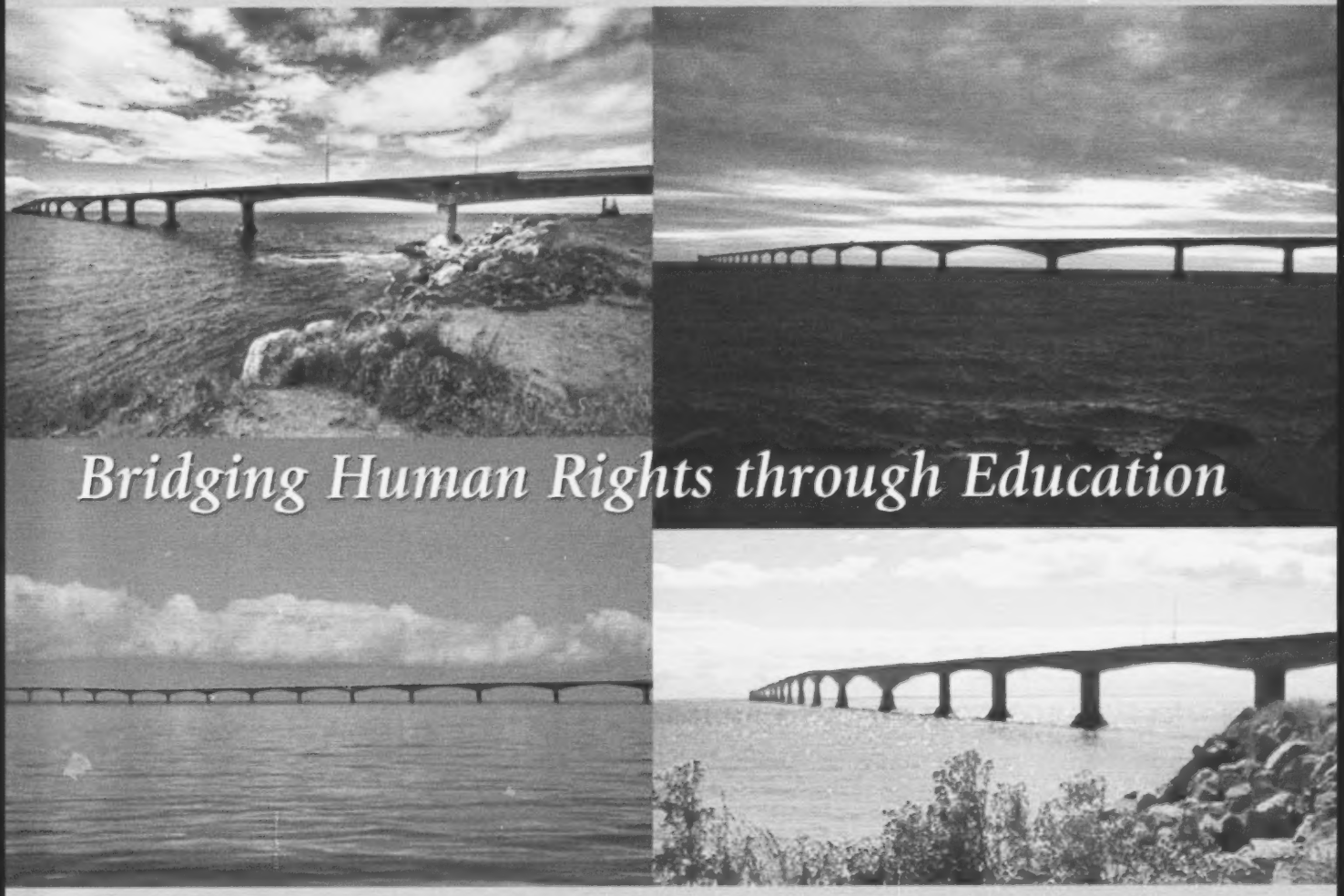
Prince Edward Island Human Rights Commission



Annual Report 2011-2012

Meet our Staff and Commissioners

Seated From Left to Right:

Anne Nicholson, Chair
B. Lorraine Buell, Administrative/Intake Officer
Alcide Bernard, Commissioner

Standing From Left to Right:

Maurice H. J. Rio, Commissioner
Wendy M. Baker, Human Rights Officer
Gregory J. Howard, Executive Director
Lou Ann Thomson, Commissioner
John Rogers, Commissioner
George A. Lyle, Commissioner
Thomas V. Hilton, Project Coordinator
Robert A. Acorn, Commissioner

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Prince Edward Island
Human Rights Commission

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Charlottetown, Prince Edward Island
C1A 7N8 Canada

Commission des Droits
de la Personne
de l'Île-du-Prince-Édouard

53, rue Water, C.P. 2000
Charlottetown, Île-du-Prince-Édouard
C1A 7N8 Canada

Anne Nicholson
Commission Chair

September 10, 2012

The Honourable Janice Sherry, Attorney General
Province of Prince Edward Island
PO Box 2000
Charlottetown PE C1A 7N8

Dear Minister:

RE: Prince Edward Island Human Rights Commission – 29th Annual Report 2011-2012

On behalf of the staff and Commissioners of the Prince Edward Island Human Rights Commission, I am pleased to provide to you the Commission's Annual Report for the fiscal year 2011-2012.

We submit this report to you for presentation to the Legislative Assembly in accordance with section 22.1 of the Prince Edward Island Human Rights Act, R.S.P.E.I. 1988, Cap. H-12 .

Should you or your staff have any questions or require any further information, please do not hesitate to contact me.

Sincerely,

Anne Nicholson
Chair

Message from the Chair

Commission Chair – Anne Nicholson

Anne Nicholson of St. Andrews Point, Lower Montague, was born in Montreal, Quebec, and moved to PEI in 1975. Commissioner Nicholson was appointed to the Commission on May 19, 2004, and reappointed on April 3, 2007. She assumed the role of Acting Chairperson in May 2009, and was appointed Chair in April 2010. As a consultant, she has worked with community groups and governments on issues including equality, health, culture, relationship violence prevention, elder abuse prevention and social justice. A graduate of UPEI, Anne chaired the PEI Advisory Council on the Status of Women, was Director of the PEI Rape/Sexual Assault Crisis Centre, and served on the Premier's Action Committee for Family Violence Prevention, the Community Foundation of PEI and Family Violence Prevention Services Inc. She is married to David Bergmark and they have three grown children, Dylan, Lukas and Chloe.

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Human rights legislation, like any valid law, must change with our growing understanding and acceptance of what is right and just in our society. It was once considered perfectly acceptable to 'let someone go' from a job if they were pregnant. Our legislation recognizes that since only women become pregnant, this is a form of discrimination based on gender.

It wasn't very long ago that we were lobbying for the inclusion of protection for gays and lesbians in the PEI *Human Rights Act*. Since this protection was added to the *Act*, PEI has gradually amended other statutes to reflect this, and wording has been changed in various documents to non-discriminatory terms.

Recently Ontario and Manitoba joined the Northwest Territories in amending their human rights legislation to include protection for transsexual and transgendered persons. In Manitoba and the Northwest Territories "gender identity" is listed as a prohibited ground of discrimination. In Ontario "gender identity" and "gender expression" are listed as prohibited grounds of discrimination. Alberta lists "gender" (not "sex") as a prohibited ground but does not define it in their Act. Their website includes "transgender" as part of that definition of gender. New Brunswick also specifies on their website that the ground "sex" implicitly protects gender identity.

The PEI Human Rights Commission has a policy to provide protection on the basis of gender expression and gender identity under the ground "sex". The Canadian Bar Association has repeatedly recommended that legislation must change to provide the best protection for transgender rights. They point out that while a policy implies that transgender people already have the same human rights as other Canadians this does not provide the best legal foundation for prevention of human rights violations and public education.

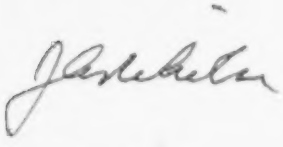
AIDS PEI, the Native Council of PEI and the Abegweit Rainbow Collective have asked government to improve protection for transgender, transsexual and intersex Islanders. This indicates that grounds specified in the *Act* are seen as acknowledging actual and specific discrimination. Anything less is seen as inadequate. Our mandate to provide public education with the aim of preventing discrimination demands that we add the grounds "gender identity" and "gender expression" to our *Act*.

This year some other adjustments were made to the *Act*. On May 30, 2012, the PEI Legislature passed the following amendments to the PEI *Human Rights Act*. The ground "physical or intellectual disability" has been replaced by the ground "disability" in order to broaden the scope of the definition of disability. The *Act* was also amended to allow the Executive Director to refuse to accept a complaint made on behalf of someone else, unless this person consents in writing to the filing of the complaint.

In the Spring of 2011, we received funding from the PEI Law Foundation to hire Tom Hilton, a M.Ed candidate at UPEI, to liaise with the Department of Education and Early Childhood Development to bring human rights into the schools of PEI. Using defined curriculum outcomes Mr. Hilton is working with curriculum specialists in the Department to inform teachers where current curriculum intersects with human rights goals. The Commission has applied for funding for 2012 to complete the project and we are excited at the prospect of having a curriculum that includes the delivery of human rights objectives.

Commissioners during 2011-2012 were Lou Ann Thomson, John Rogers, George Lyle, Alcide Bernard and myself. In April 2012, we welcomed Maurice Rio from Summerside, PEI, who has served with the Commission previously, and Robert (Bob) Acorn from Charlottetown, PEI. The staff of the Commission includes Gregory Howard, Executive Director, Wendy Baker, Human Rights Officer, and Lorraine Buell, Administrative/Intake Officer. In the Spring of 2011, Sophie Fournier, a summer student from France, joined the Commission for a six-week internship, and Claire Patoureau, also from France, arrived in January 2012. They have been invaluable in providing support and research to the Commission.

The staff and Commissioners do their best to respond to requests for educational presentations while managing the work of the Commission, conducting panel hearings and writing decisions. We are very fortunate to have an excellent staff and I thank them for their hard work and professionalism. I would also like to thank my fellow Commissioners for their support throughout the year and their individual commitment to the protection of human rights on PEI.



Anne Nicholson,
Commission Chair

Powers and Duties of the Commission

Since the enactment of the *Human Rights Act* on September 11, 1976, the Prince Edward Island Human Rights Commission has been empowered to:

- administer and enforce the *Act*
- develop a program of public information and education in the field of human rights to forward the principle that every person is free and equal in dignity and rights.
- advise government on suggestions, recommendations and requests made by private organizations and individuals.
- report as required by the Minister on the business and activities of the Commission.
- consider, investigate or administer any matter or activity referred to the Commission by the Minister or the Lieutenant Governor in Council.

The *Human Rights Act* is deemed to prevail over all other laws of the Province. A person may, within one year of an alleged incident, file a complaint with the Commission. The complaint must fall within one or more of the areas covered by the Prince Edward Island *Human Rights Act*:

- Accommodations, Services and Facilities
- Lease or Sale of Property
- Employment/Equal Pay
- Membership in Employee or Professional Organizations
- Advertisements and Publications
- Volunteer Work

The complaint must be based on one or more of the grounds covered by the Prince Edward Island *Human Rights Act*. The grounds of discrimination are:

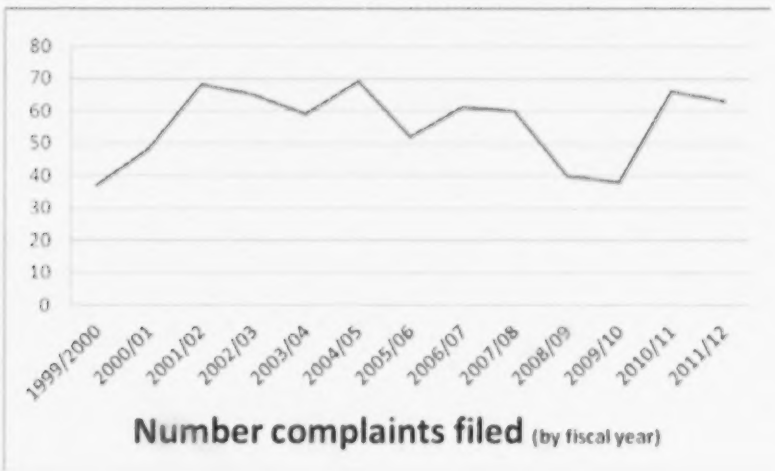
- Age
- Colour, Race and Ethnic or National Origin
- Criminal Conviction (in employment only)
- Creed or Religion
- Disability
- Family Status
- Marital Status
- Political Belief
- Sex (including pregnancy and sexual harassment)
- Sexual Orientation
- Source of Income

- Association with an individual or group of individuals protected by the *Act* is also protected. Discrimination is prohibited against any individuals who have filed complaints, or have given evidence/assistance during an investigation or at a panel hearing.

Education

The Role of Public Hearings

During the 2011-2012 fiscal year, the Commission received sixty five (65) formal complaints. Panels have released decisions that have attracted a great deal of attention in local media. The chart below indicates the number of formal complaints filed each fiscal year since 1999-2000:



The Commission notes a correlation between the activity of Human Rights Panels at widely publicized hearings, and the number of new complaints. The attention given to such hearings appears to generate more awareness and a greater willingness to seek redress for human rights violations. The correlation suggests a valuable role for specialized human rights adjudication, both in offering individual redress and publicizing and educating on human rights issues.

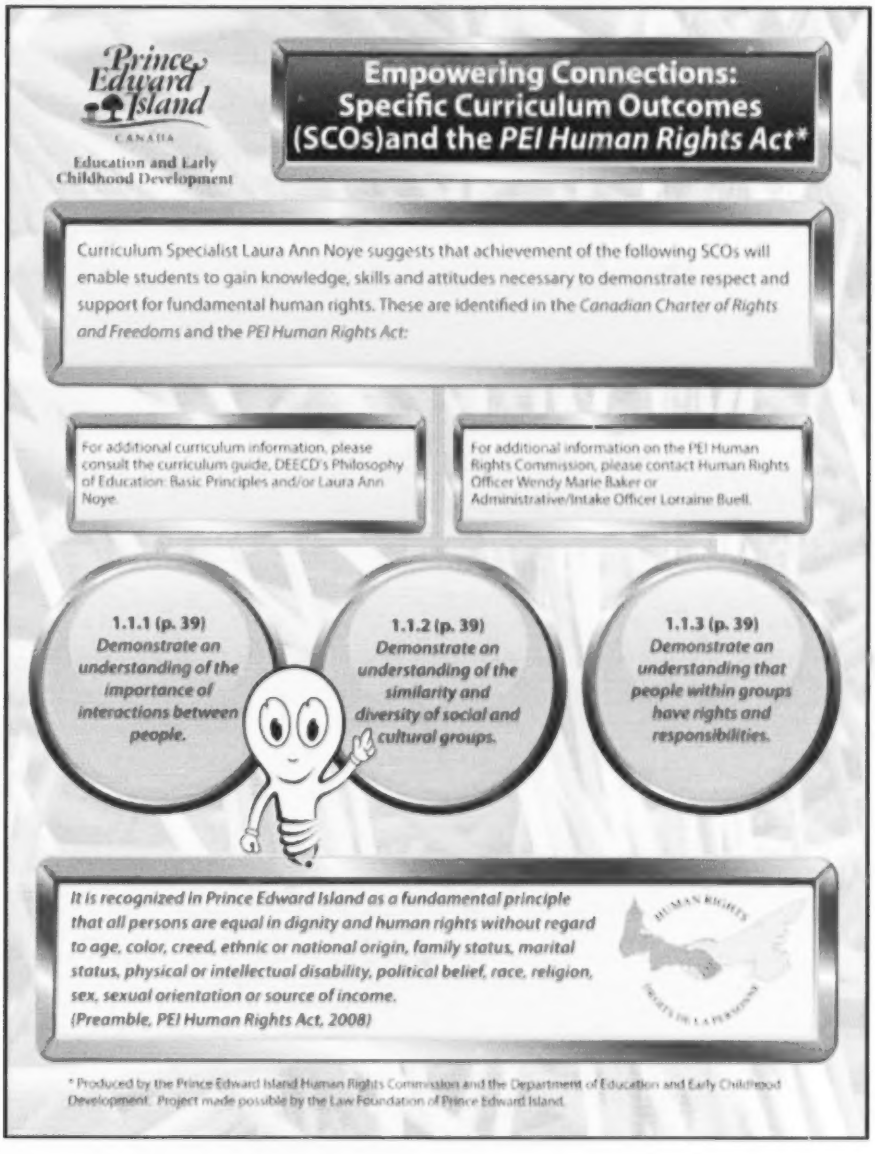
Training Sessions

The Commission provides training to individuals, businesses and schools. During 2011-2012, the Commission provided thirty (30) training sessions. Although these training sessions are generally requested by members of the public, some are a component of settlement agreements or a part of a Panel order. These education sessions inform members of the public of their rights and duties, and include a presentation on the Commission, the *Human Rights Act* and the legislation regarding human rights in general. The Commission invites any organization interested in receiving our free education service to contact us.

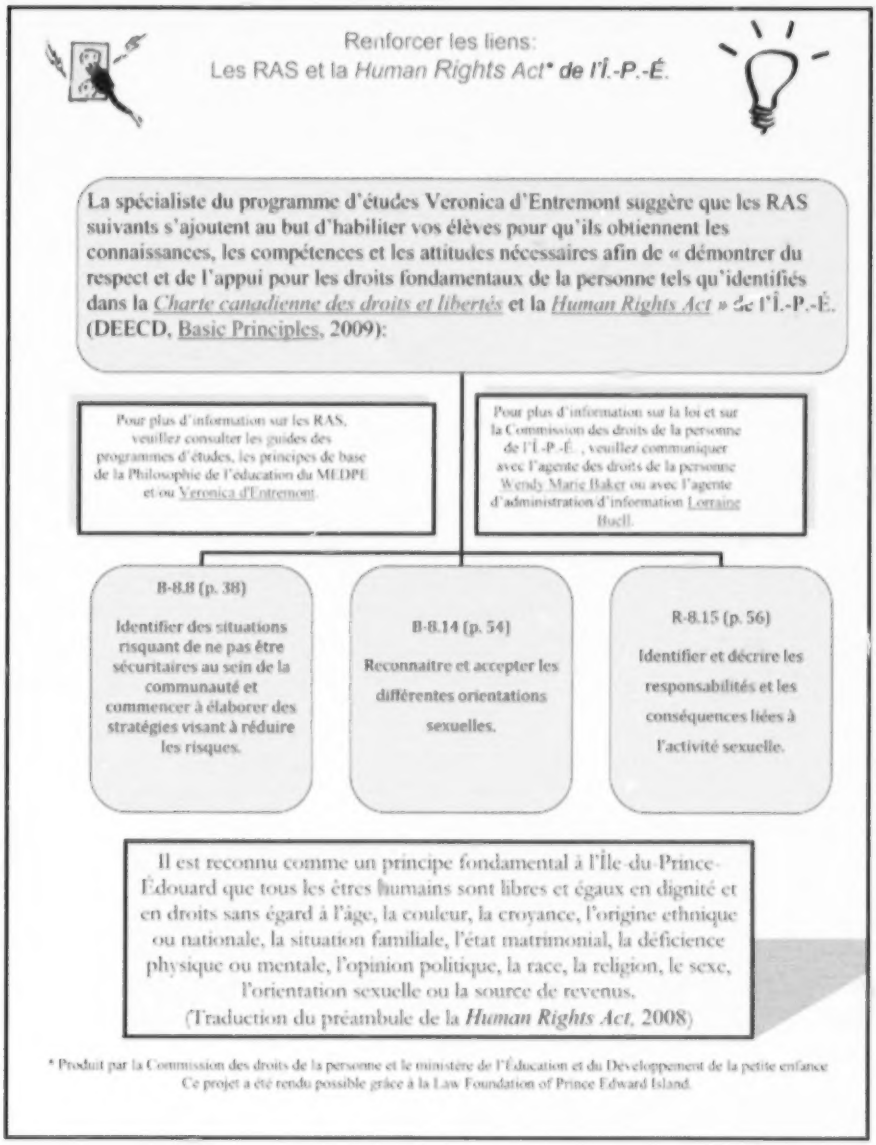
Partnerships

The Commission believes that partnerships are a prerequisite to developing effective programs of public information and education in the field of human rights. In 2011 the Commission received funding from the Law Foundation of Prince Edward Island to facilitate ongoing collaboration with the PEI Department of Education and Early Childhood Development (DEECD) and the PEI Teachers Federation (PEITF). The resulting project identified specific instances in fifty (50) school courses where existing curriculum objectives link to fundamental human rights as identified in both the Canadian Charter of Rights and Freedoms and the PEI *Human Rights Act*.

Grade 1 Social Studies

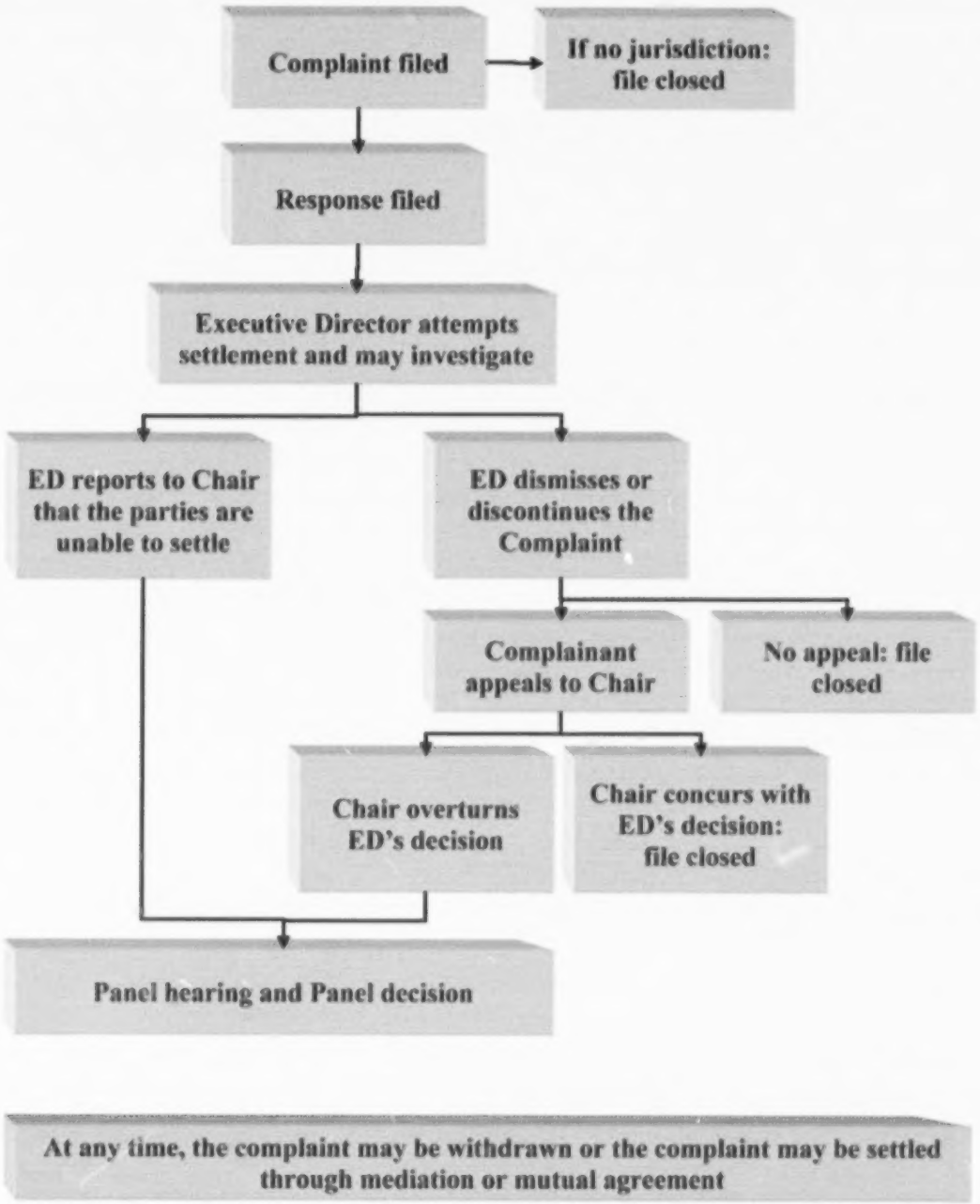

Prince Edward Island
CANADA
Education and Early Childhood Development
Empowering Connections: Specific Curriculum Outcomes (SCOs)and the PEI Human Rights Act*
Curriculum Specialist Laura Ann Noye suggests that achievement of the following SCOs will enable students to gain knowledge, skills and attitudes necessary to demonstrate respect and support for fundamental human rights. These are identified in the Canadian Charter of Rights and Freedoms and the PEI Human Rights Act:
For additional curriculum information, please consult the curriculum guide, DEECD's Philosophy of Education: Basic Principles and/or Laura Ann Noye.
For additional information on the PEI Human Rights Commission, please contact Human Rights Officer Wendy Marie Baker or Administrative/Intake Officer Lorraine Buell.
1.1.1 (p. 39) Demonstrate an understanding of the importance of interactions between people.
1.1.2 (p. 39) Demonstrate an understanding of the similarity and diversity of social and cultural groups.
1.1.3 (p. 39) Demonstrate an understanding that people within groups have rights and responsibilities.
It is recognized in Prince Edward Island as a fundamental principle that all persons are equal in dignity and human rights without regard to age, color, creed, ethnic or national origin, family status, marital status, physical or intellectual disability, political belief, race, religion, sex, sexual orientation or source of income.
(Preamble, PEI Human Rights Act, 2008)
* Produced by the Prince Edward Island Human Rights Commission and the Department of Education and Early Childhood Development. Project made possible by the Law Foundation of Prince Edward Island.

Grade 8 Fondations personnelles et sociales.


Renforcer les liens:
Les RAS et la *Human Rights Act** de l'Î.-P.-É.
La spécialiste du programme d'études Veronica d'Entremont suggère que les RAS suivants s'ajoutent au but d'habiliter vos élèves pour qu'ils obtiennent les connaissances, les compétences et les attitudes nécessaires afin de « démontrer du respect et de l'appui pour les droits fondamentaux de la personne tels qu'identifiés dans la *Charte canadienne des droits et libertés* et la *Human Rights Act* » de l'Î.-P.-É. (DEECD, Basic Principles, 2009):
Pour plus d'information sur les RAS, veuillez consulter les guides des programmes d'études, les principes de base de la Philosophie de l'éducation du MEDPE et ou Veronica d'Entremont.
Pour plus d'information sur la loi et sur la Commission des droits de la personne de l'Î.-P.-É. , veuillez communiquer avec l'agente des droits de la personne Wendy Marie Baker ou avec l'agente d'administration d'information Lorraine Buell.
B-8.8 (p. 38)
Identifier des situations risquant de ne pas être sécuritaires au sein de la communauté et commencer à élaborer des stratégies visant à réduire les risques.
B-8.14 (p. 54)
Reconnaitre et accepter les différentes orientations sexuelles.
R-8.15 (p. 56)
Identifier et décrire les responsabilités et les conséquences liées à l'activité sexuelle.
Il est reconnu comme un principe fondamental à l'Île-du-Prince-Édouard que tous les êtres humains sont libres et égaux en dignité et en droits sans égard à l'âge, la couleur, la croyance, l'origine ethnique ou nationale, la situation familiale, l'état matrimonial, la déficience physique ou mentale, l'opinion politique, la race, la religion, le sexe, l'orientation sexuelle ou la source de revenus.
(Traduction du préambule de la *Human Rights Act*, 2008)
* Produit par la Commission des droits de la personne et le ministère de l'Éducation et du Développement de la petite enfance
Ce projet a été rendu possible grâce à la Law Foundation of Prince Edward Island.

To position the *Act* as a valuable, versatile teaching tool across grade and subject levels, these linkages were then communicated to teachers at the PEITF Annual Convention.

Complaint Process


Complaint filed
If no jurisdiction: file closed
Response filed
Executive Director attempts settlement and may investigate
ED reports to Chair that the parties are unable to settle
ED dismisses or discontinues the Complaint
Complainant appeals to Chair
No appeal: file closed
Chair overturns ED's decision
Chair concurs with ED's decision: file closed
Panel hearing and Panel decision
At any time, the complaint may be withdrawn or the complaint may be settled through mediation or mutual agreement

Complaint Statistics

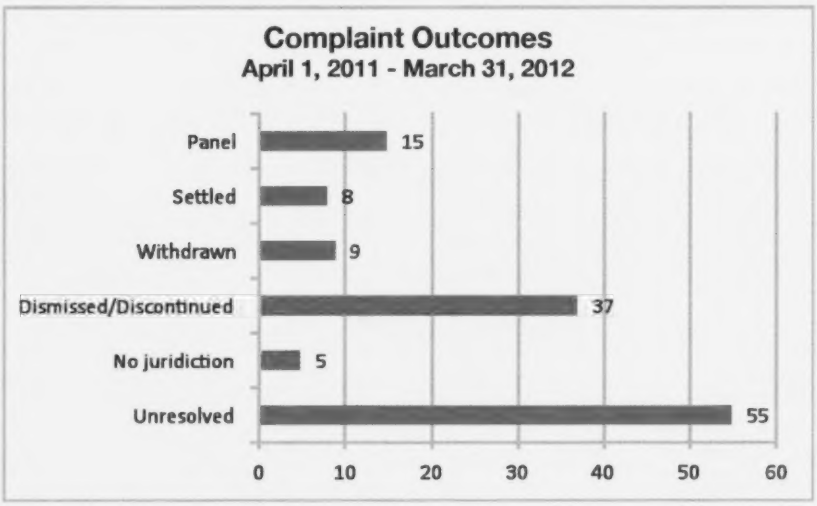
Sixty four (64) complaints were carried over from previous years and sixty five (65) new complaints were received for a total of one hundred twenty nine (129) open files during fiscal 2011-2012.

In addition to written complaints, the Commission received approximately 1,800 inquiries from individuals and organizations concerned about their rights.

Number of Complaints in Area and Ground							
	Carried over from previous years			Received in 2011-2012			
Ground of Discrimination	**Employ-ment**	**Services**	**Other or multiple areas**	**Employ-ment**	**Services**	**Other or multiple areas**	**Total**
Age	13		1	2		1	17
Association							
Colour, Race, Ethnic/National Origin	6		1	1	2	2	12
Creed/Religion							
Criminal Conviction	1				1		2
Family Status					2		2
Marital Status							
Disability	10	8	1	8	11	1	39
Political Belief	2		1	1			4
Sex (including Pregnancy and Harassment)	2			7	1		10
Sexual Orientation	5				1		6
Source of Income	1			1	1	1	4
Filing a Complaint/Giving Evidence							
Multiple Grounds	8	2	2	9	9	3	33
Total Number of Complaints	48	10	6	29	28	8	129

Most complaints arise in the areas of employment and services, while the most common ground of discrimination is disability.

Complaint Outcomes



Panel: During the 2011-2012 fiscal year, four (4) complaints were referred to a Panel hearing, and eleven (11) complaints awaiting a Panel hearing were carried over from previous years.

Settled: Eight (8) complaints were settled.

Withdrawn: Nine (9) complaints were withdrawn by the complainant or were considered withdrawn.

Dismissed or Discontinued: During the 2011-2012 fiscal year, thirty seven (37) complaints were dismissed or discontinued by the Executive Director as set out in the Act (section 22(4)). Fourteen (14) complainants requested a review by the Chair.

No Jurisdiction: Five (5) complaints were deemed not to be within the jurisdiction of the Commission (including those complaints filed outside the one year limitation period).

Unresolved: At year end, fifty five (55) complaints in various stages of the complaint process (investigation, settlement negotiations, held in abeyance) were carried over to fiscal year 2012-2013.

Settlements

It is less costly and more effective for parties involved in human rights complaints to develop their own solutions through settlement discussion. Settlement between Complainants and Respondents may be agreed at any time before a human rights Panel rules on a complaint. Therefore, mediation services are an integral component of the Commission's work. Some settlements are also achieved through negotiations between parties that are facilitated by Commission staff. Consistent with the Commission's mandate of providing human rights education, settlements often include an educational component for one or both parties to the complaint. The following summaries are examples of some of the complaints that were settled during the 2011-2012 fiscal year.

Services – Sex (sexual harassment)

A woman complained she was sexually harassed by a person in authority. The harassment was covered by the Human Rights Act because the unwelcome behavior was linked to sex, a prohibited ground of discrimination. The service provider was responsible to provide an harassment-free environment. Both parties agreed to take advantage of the mediation services provided by the Commission, the parties reached a settlement, and the Respondent agreed to make an ex gratia payment and provide a letter of apology. The Respondent also agreed to take steps to ensure that it will provide an harassment-free environment.

Employment – Disability

After working for six seasons for the same employer, the Complainant had surgery that required sick leave. Although the Complainant got well and could go back to work as he did in other years, no position was available because someone else was hired for the job that he usually did. In this type of case, the Complainant has to prove that he was available and qualified and that someone no better qualified obtained the position. Then the onus is on the Respondent to demonstrate non-discriminatory reasons for the failure to rehire. In a settlement reached by the parties, the employer agreed to pay the Complainant general damages and to provide him with a letter of apology and a letter of reference.

Employment – Sexual Orientation

The employer decided to downsize its staff. The Complainant and two other employees, who were the only ones laid off, had the same sexual orientation or were identified as being lesbian. In a settlement reached by the parties, the Respondent agreed to pay the Complainant general damages, to provide letters of apology and to participate in an education session conducted by the Human Rights Commission.

Employment – Disability

After three years working for the same employer, the Complainant developed pain resulting from surgery that required her to be out on sick leave. During this time, her employer reorganized the office and said that her front desk job was eliminated but there would be a job for her in retail. Thereafter, the employer dismissed the Complainant. The general rule is that employers have a duty to accommodate their employees' medical conditions to the point of undue hardship and not to dismiss for a discriminatory reason. The parties reached a settlement, and the Respondent agreed to pay the Complainant wage replacement benefits plus vacation pay and to provide her a letter of reference.

Panel Hearing and Court Decisions

Panel hearing and Court decisions are available on the Commission Website.

Alison MacKinnon v. Inn on the Hill (1991) Inc. ***(2012 PEI HRC)***

On October 28, 2010, Alison MacKinnon filed a complaint alleging discrimination in the area of employment on the basis of sex (pregnancy). Less than a month after beginning her employment, during her probationary period, the Complainant advised her employer that she was pregnant. Forty minutes later her employment was terminated. The Respondent said that they had discussed the dismissal of the Complainant before the disclosure of her pregnancy and that she was dismissed because of her poor performance.

As the parties were unable to reach a settlement, the Executive Director referred the matter to a Panel hearing which was held on December 12, 2011.

The Panel gave its decision on February 2, 2012 and found that the Respondent discriminated against the Complainant on the basis of her pregnancy, stating that the facts indicate that pregnancy was a factor in the Respondent's decision to dismiss. The Panel states at paragraph 34:

> After the complaint was filed, the Respondent provided a list of reasons why the Complainant was not suited to the job. The Complainant testified that these concerns were all new to her and, had she known about them, she would have done her best to address them. According to section 29(1) of the ***Employment Standards Act, R.S.P.E.I. 1988 Cap. E-6.2*** an employer does not have to give notice or compensation when they dismiss an employee within the first six months of employment; however, employers are still held to the standards contained within the ***Human Rights Act*** and may not subject an employee to less favourable treatment based on any of the grounds of discrimination set out in the ***Act***.

The Panel awarded Ms. MacKinnon an amount for lost wages and Employment Insurance benefits and $3,500 for hurt and humiliation. The Panel also ordered that the Respondent accept human resource training, including an educational presentation on human rights arranged by the Commission.

Silvain Olivain Aritho Amfoubalela v. French Language School Board (HRC File 1595-08)

On May 5, 2008, Mr. Amfoubalela filed a complaint alleging discrimination in the area of employment on the basis of colour, race and ethnic or national origin. The Executive Director conducted an investigation. On July 29, 2010, he referred the matter for a hearing, as the parties were unable to reach a settlement.

The Panel hearing was held on October 31, November 1, 2, 7, 8, 9, 16, 17, December 19 and 20, 2011. Before the Panel gave its decision, the parties reached a settlement through mediation. The matter settled on March 15, 2012.

Nilsson, Wills and Fell v. University of Prince Edward Island (2010 PEI HRC)

The Panel gave a decision dated February 18, 2010, that the mandatory retirement of the Complainants at age 65 constituted discrimination and that the University of Prince Edward Island failed to establish that the age discrimination was justified by the exceptions under Sections 6(4)(a), 11 and 14(1)(d) of the Human Rights Act. The Panel further found that the University was solely liable for the damages suffered by the Complainants. On March 16, 2010, the University filed an application for Judicial Review of the Panel's decision.

On Judicial Review, the Court upheld the Panel order reinstating the Complainants with back pay but remitted the issue of mitigation to the Panel for reconsideration (*UPEI v. Thomson & Ors., 2011 PESC 05 and UPEI v. Thomson & Ors.,* 2012 PESC 7).

The parties entered into settlement discussions, which resulted in Mr. Wills and Ms. Fell accepting settlement offers.

Bartmann, O'Rourke and Collins v. University of Prince Edward Island (2011 PEI HRC)

Professors Barry Bartmann, Robert O'Rourke and Ronald Collins filed complaints alleging that the University of Prince Edward Island discriminated against them in employment on the basis of age when they were mandatorily retired at age 65.

The matter was referred to a Panel on August 10, 2010. In June 2011, following the finding of liability against the University and the awarding of damages in Nilsson et al v. UPEI (2010 PEIHRC), the Panel conducted a hearing into damages for Professors Bartmann, O'Rourke and Collins. The Panel awarded the same recovery as in the Nilsson case. The University filed an application for Judicial Review on damages.

Through settlement discussions, Professors O'Rourke, Collins and Bartmann accepted offers of settlement.

***Bingley et al v. Eastern School Board* (HRC Files 1663-10, 1666-10, 1667-10, 1678-10, 1681-10, 1692-10, and 1710-10)**

Lawrence Bingley, Stephen MacLean, George Bradley, Allen Perry, Wayne MacKinnon, Leonard Mullen, and Carol White are all school bus drivers. They filed complaints alleging that the Eastern School Board discriminated against them in the area of employment on the basis of age when they were forced to retire at 65. The Panel hearing was scheduled for July 9, 10, 11 & 12, 2012. This matter was resolved prior to the hearing.

***PEI Music and Amusement Operators Association Inc. et al v. Government of Prince Edward Island* (HRC File 1436-07)**

On April 16, 2007, the Complainants filed a complaint alleging discrimination in the area of employment on the basis of political belief. On January 23, 2009, the Executive Director found the complaint to be outside the one year limitation period. The Complainants requested a review by the Chairperson of the Commission who concurred with the decision of the Executive Director.

On May 25, 2009, the Complainants filed an application for Judicial Review and the hearing was held on March 8, 2010. In reasons dated September 21, 2010, the Court found that the decision of the Executive Director was based on an error of law in finding that the limitation period in the *Human Rights Act* is not subject to the Discoverability Rule or in failing to determine whether the Discoverability Rule applied. Therefore, the Applications Judge nullified the order of the Executive Director and returned this matter to him for further consideration *(PEI Music and Ors. v. PEI Gov't and HRC, 2010 PESC 40)*.

The Government of Prince Edward Island appealed the Court's decision. The appeal was heard on June 23, 2011. On November 24, 2011, the court dismissed the appeal *(P.E.I. Music v. Gov't. P.E.I. & HRC,* 2011 PECA 18).

***Deborah J. Kelly (Hawkes) v. Welfare Assistance Appeal Board* (2011 PEI HRC)**

On June 5, 2003, Ms. Kelly filed a complaint alleging discrimination in the area of services on the basis of source of income. The complaint was subsequently amended to add the ground of marital status. In a separate complaint filed on September 17, 2003, Ms. Kelly added the grounds of association, sexual orientation and political belief. The Executive Director dismissed both complaints on August 26, 2004. Ms. Kelly requested that the decisions be reviewed by the Chairperson of the Commission. The Chairperson upheld the decisions of the Executive Director. Ms. Kelly then made application for Judicial Review. Following a motion by Ms. Kelly for the separation of the complaints and appeals of the decision dismissing her motion, the Judicial Review was held on February 27, 2009. A decision dated

May 14, 2009 allowed the application for judicial review and directed the Chairperson of the Commission to establish a Panel of Inquiry. Ms. Kelly appealed the Court's decision. The Court of Appeal released its decision dismissing the appeal on March 16, 2010.

On January 17, 2011, the Panel issued a decision dismissing Ms. Kelly's complaint. Ms. Kelly filed an application for Judicial Review on February 18, 2011. The Judicial Review was heard on March 5, 2012. The Court rendered its decision on April 25, 2012, dismissing the application for Judicial Review (*Hawkes v. PEI Human Rights Comm. & ano.*, 2012 PESC 15).

Deborah J. Kelly (Hawkes) v. Social Assistance Appeal Board (HRC File 1277-04)

Ms. Kelly filed a complaint on September 20, 2004, alleging discrimination in the area of employment and services on the basis of association, sexual orientation, source of income and political belief. The Executive Director dismissed the complaint on November 7, 2005. Ms. Kelly requested that the decision be reviewed by the Chairperson of the Commission who in a decision on February 16, 2006, concurred with the decision of the Executive Director. Ms. Kelly then filed an application for Judicial Review. The Court granted the application for Judicial Review in part and awarded costs to Ms. Kelly in the amount of Two Hundred Dollars ($200) and ordered the complaint be sent back to the Commission for investigation. The Executive Director Delegate dismissed the complaint on October 30, 2008, and Ms. Kelly requested a review of that decision. Upon review, the Chairperson concurred with the decision of the Executive Director Delegate. Ms. Kelly filed an application for Judicial Review (which was heard on January 13, 2010. The Court dismissed Ms. Kelly's application (*Kelly v. Social Assistance Board et al.*, 2010 PESC 34).

Ms. Kelly appealed the Supreme Court's decision. On September 26, 2011, the Chief Justice of the Court of Appeal gave his decision orally, and ordered that the Respondent Department of Social Services and Seniors pay costs to the Complainant and that the matter be referred back to the Commission for further investigation.

Nancy L. Riley v. Government of PEI (HRC File 1562-07)

On August 2, 2007, Ms. Riley filed a complaint alleging discrimination in the area of employment on the basis of physical or intellectual disability. The complaint was dismissed by the Executive Director on November 3, 2008. Ms. Riley requested a review by the Chair, who concurred with the Executive Director's decision.

Ms. Riley filed an application for Judicial Review on April 7, 2009. The hearing of the application was held on February 28, 2011. The Court dismissed Ms. Riley's application stating:

> *[19] When considering options for accommodation, the employer has an obligation to make appropriate inquiries and gather accurate information with regard to the employee's abilities and the effects of his/her disability. The employee has a right to be returned to the employer's active work force once he/she is able to resume working, but the employer has an obligation to investigate not only whether an employee can perform an existing job, but whether existing jobs can be modified such that the employee can do them (see* ***Ontario (Human Rights Commission) v. Falconbridge Ltd.,*** *8 CCEL 3d 120, 2001 CarswellOnt 683;* ***Calgary District Hospital Group v. U.N.A. Local 121-R*** *(1994), 41 LAC (4th) 319).*

> *[20] While the employee seeking accommodation can expect the employer to consider their current abilities and to make a real effort to determine whether a job can be filled by the employee or modified as accommodation, the employee has no right to expect to be placed in the position he/she most desires. Further, the employee seeking accommodation cannot expect the employer to infer what the employee's abilities are. The employee must inform the employer what he/she can and cannot do and what types of accommodation are necessary (see* ***Verbicky v. Morningstar Golf Club Ltd.****, 2011 BCHRT 179, 2011 CarswellBC 1843). The employee who fails to inform his/her employer of his/her abilities and simply demands accommodation by being placed in a particular job cannot sustain an argument that the employer has failed to accommodate his/her disability (per Taylor J.)* ***Riley v. Gov't of P.E.I. & ano.,*** **2011 PESC 20.**

Commissioners

The Commissioners are appointed by the Legislative Assembly on the recommendation of the Standing Committee on Health, Social Development and Seniors. They come from a variety of personal and professional backgrounds. Each brings experience and human rights expertise to decision-making, and provides leadership in setting the direction and promoting the work of the Commission.

Lou Ann Thomson, Commissioner

Lou Ann Thomson of Georgetown was appointed to the Commission on April 11, 2006, and her third term expires on April 18, 2014. She has served as a public health nurse in the Canadian North, practiced criminal law, and has served as a part-time member of the National Parole Board. She has experience and training in conflict resolution and has acted for a number of years as a volunteer mediator for youthful offenders in the Restorative Justice Initiative in Nova Scotia. She received her Bachelor of Nursing at Dalhousie University and her Bachelor of Laws at Dalhousie Law School. She has a strong record of community involvement and has worked to bring diverse groups together to build a healthy community. After more than 40 years as a parent, a community volunteer, a nurse and a lawyer, she remains committed to promoting the dignity of all persons.

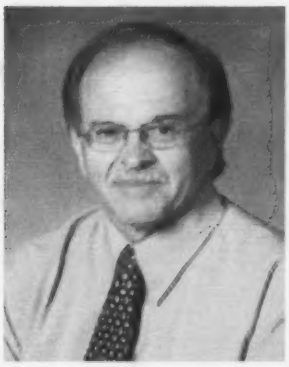
John Rogers, Commissioner

John Rogers of the Brae, Prince Edward Island, was appointed to the Commission in 2008. Mr. Rogers holds a B.A. and B.Ed. from the University of Prince Edward Island and a M.Ed. from the University of Ottawa. He retired from the public school system in 2005 after serving as a teacher, vice-principal, and principal. Mr. Rogers is presently employed as a sessional lecturer in the Faculty of Education at UPEI. He also devotes time to the family farm in Brae. Mr. Rogers has served on numerous organizations both at the local and provincial levels. He is currently a director of the Canadian Potato Museum in O'Leary and sits as vice-chair of the Leard's Pond Environment Project. Mr. Rogers is strongly committed to the fundamental principle that "all persons are equal in dignity and human rights" (Preamble, PEI Human Rights Act). He works towards the fair and equal treatment of all persons in our society.

George A. Lyle, Commissioner

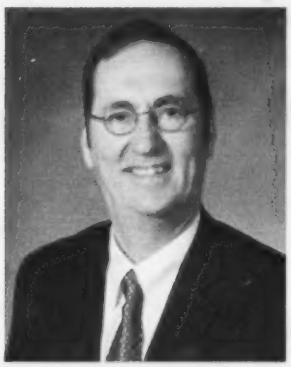
George Lyle of Summerside was appointed Commissioner on April 16, 2009 and reappointed on April 17, 2012, for a second three year term. Mr. Lyle has been practicing law as a general practitioner since October 1978 in the Province of Prince Edward Island and prior to that held various positions with the Guaranty Trust Company of Canada. He is a graduate of the University of Ottawa Law School and a certificate program in Trust Business from Queens University. During the period of his private practice of law in the Province of Prince Edward Island he held the position of Chairperson of the PEI Labour Relations Board and is past President of the Law Society of Prince Edward Island and the PEI branch of the Canadian Bar Association. Mr. Lyle has served on various boards and has a strong community involvement in the City of Summerside. He is married and has four children.

Alcide Bernard, Commissioner



Alcide Bernard of Wellington was appointed Commissioner in April 2011 for a three year term. Mr. Bernard holds a B.A. and M.B.A. from University of Moncton. He retired from Old Dutch Foods Inc in March 2011 after having served in various management positions throughout his 25 years in the potato chipping industry. Mr. Bernard is presently employed with the Atlantic Commission on Acadian Tourism as Tourism Development Officer for PEI. He has served as Chairman of the Incorporated Community of Wellington as well as having been involved in many other volunteer organizations in the Acadian community of Prince Edward Island.

Maurice H. J. Rio, Commissioner



Maurice Rio was appointed Commissioner for a term of three years on April 17, 2012. This is Maurice's second appointment having served on the Commission from 2006 to 2009. Maurice returned to the Island after 22 years of public service with the Federal Department of the Solicitor General involved in national issues. He has studied at Dalhousie University, Memorial University and the University of Regina. Maurice currently resides in the City of Summerside. He is a proponent of "natural justice" and is pleased to return to the Commission to continue his work for human rights.

Robert A. Acorn, Commissioner

Robert Acorn, born and raised in Souris, P.E.I., was appointed Commissioner for a three-year term on April 17, 2012. He holds a degree in Political Science from Dalhousie University and a degree in Public Administration from the University of Prince Edward Island. He has worked with P.E.I. Housing Corporation, the University of Alberta, the Alberta Government, and most recently he was a management consultant with George May International in Edmonton. Bob presently resides in Charlottetown with his wife Thelma (Walsh) Acorn. He has two children, Kim and Rick.

Staff

Gregory J. Howard, Executive Director

Greg has been Executive Director of the Commission since 1999, except from 2007-2009 when he took a leave of absence to work in the Office of the Attorney General in Bermuda. He studied law at Dalhousie University and English and Education at Memorial University of Newfoundland. Greg is a member of the Law Society of Prince Edward Island and the Bermuda Bar Association. He was admitted to the Bar in 1991. Originally from Newfoundland, he married an Islander and they have two grown sons.

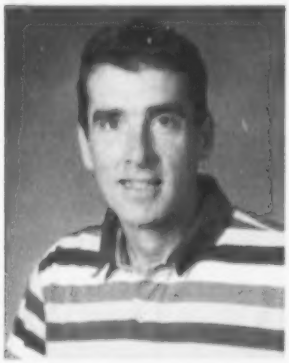
Wendy M. Baker, Human Rights Office

Wendy Marie Baker was born in Halifax and grew up in the village of Spanish Ship Bay, Nova Scotia. She has lived and worked in several places across Canada, but has been proud to call Charlottetown her home since 2008. Wendy joined the Commission as Human Rights Officer in September 2010. She is a person with a disability. She has been a lifelong advocate for equity and equality, and supports the concept of promoting equality through education. Wendy received her Bachelor of Arts degree from Saint Mary's University in 1997 and a Diploma in Media Studies (Broadcasting) from the Atlantic Media Institute in 1999. She worked with the Canadian National Institute for the Blind for several years before returning to university. She received her law degree from the University of Victoria in 2006. Wendy has held legal positions in both the public and private sector, and is a member of both the Law Society of Newfoundland and Labrador and the Law Society of Prince Edward Island.

B. Lorraine Buell, Administrative/Intake Officer

Lorraine is the Commission's Administrative/Intake Officer and in-house Mediator. She has been a member of the Commission's team since 1998. She is an Islander and a resident of Stratford, PEI. Lorraine is a current member of the Canadian Payroll Association and past member of the Council of Canadian Administrative Tribunals and International Association of Administrative Professionals. She is a Commissioner of Oaths and Panel Clerk at human rights hearings. Lorraine received her Business Administration at Career Skills, Executive Office Administration at Holland College and Conflict Resolution Studies at University of Prince Edward Island.

Thomas Hilton, Project Coordinator



A native Islander, Tom earned a BA from Bowdoin College (Brunswick, ME) and is now completing his Master of Education degree at UPEI. Thanks to project funding from the Law Foundation of PEI, Tom worked at the Commission from July to October 2012 to complete the project that he began with the Commission in the Spring of 2011. Over this period, Tom solidified linkages between the Commission and PEI's Department of Education and Early Childhood Development to advance the education of students on human rights.

Claire Patoureau, Student

Claire joined the Commission for an eight-month internship in 2012. She is from France. Claire is studying political science and law in a five-year program at the Institut d'Études Politiques of Rennes.

Audited Financial Statements

AUDITOR GENERAL

CHARLOTTETOWN
PRINCE EDWARD ISLAND

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

FINANCIAL STATEMENTS

MARCH 31, 2012

AUDITOR GENERAL

CHARLOTTETOWN
PRINCE EDWARD ISLAND

AUDITOR'S REPORT

To the Commissioners of the
Prince Edward Island Human Rights Commission

I have audited the financial statements of the **Prince Edward Island Human Rights Commission,** which comprise the statements of financial position as at March 31, 2011, and 2012, and the statements of operations and accumulated deficit and changes in net debt for the years then ended and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian generally accepted accounting principles for the public sector and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on these financial statements based on my audits. I conducted the audits in accordance with Canadian generally accepted auditing standards. Those standards require that I comply with ethical requirements and plan and perform the audits to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall financial statement presentation.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Commission as at March 31, 2011, and 2012, and the results of its operations, changes in net debt and cash flows for the years then ended in accordance with Canadian generally accepted accounting principles for the public sector.

Colin Younker, CA
Auditor General

Charlottetown, Prince Edward Island
August 16, 2012

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

STATEMENT OF FINANCIAL POSITION

AS AT MARCH 31, 2012

	2012 $	2011 $
Financial Assets		
Cash	8,240	7,711
Accounts receivable	210	463
	8,450	8,174
Liabilities		
Accounts payable and accrued liabilities (Note 3)	40,508	19,037
Net Debt	32,058	10,863
Non-Financial Assets		
Prepaid expenses	1,921	2,600
Accumulated Deficit	30,137	8,263

(The accompanying notes are an integral part of these financial statements.)

Approved on behalf of the Commission:

Chairperson

Commissioner

AUDITOR GENERAL - CHARLOTTETOWN, PEI

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

STATEMENT OF OPERATIONS AND ACCUMULATED DEFICIT

FOR THE YEAR ENDED MARCH 31, 2012

	Budget 2012 $	2012 $	2011 $
Revenues			
Grants - Province of Prince Edward Island	352,300	399,075	352,300
Other grants	9,000	9,000	7,500
Other	-	178	-
	361,300	408,253	359,800
Expenses			
Commissioner per diem (Note 6)	30,000	34,722	29,553
Conferences and training	9,000	7,271	7,713
Capital assets	2,500	407	2,987
Hearing expenses	21,000	19,290	5,619
Memberships	2,900	2,913	4,040
Miscellaneous	5,182	5,340	4,807
Office and special projects	8,200	6,883	9,563
Photocopying	4,000	3,204	3,829
Professional fees	5,000	23,541	15,770
Rent	21,000	21,025	17,967
Salaries and benefits (Note 7)	264,350	281,217	246,657
Travel - staff	6,000	6,870	3,794
- commissioners	13,000	14,025	14,768
Telephone	5,000	3,419	3,550
	397,132	430,127	370,617
Annual Deficit	35,832	21,874	10,817
Accumulated Deficit, beginning of year		8,263	2,554
Accumulated Deficit, end of year		30,137	8,263

(The accompanying notes are an integral part of these financial statements.)

AUDITOR GENERAL - CHARLOTTETOWN, PEI

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

STATEMENT OF CHANGES IN NET DEBT

FOR THE YEAR ENDED MARCH 31, 2012

	Budget 2012 $	2012 $	2011 $
Net Financial Assets (Debt), beginning of year	(8,263)	(10,863)	1,656
Changes in year:			
Annual deficit	35,832	21,874	10,817
(Increase) decrease in prepaid expenses	-	(679)	1,702
Change in Net Debt	35,832	21,195	12,519
Net Debt, end of year	44,095	32,058	10,863

(The accompanying notes are an integral part of these financial statements.)

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED MARCH 31, 2012

1. Purpose of the Organization

The Prince Edward Island Human Rights Commission (the Commission) is a corporate body established under section 16 (1) of the *Human Rights Act* of Prince Edward Island. The Commission is responsible for administering, enforcing the *Human Rights Act* and providing education and public information in the field of human rights. The Commission also inquires into and endeavours to effect a settlement of any complaint of a violation of the *Human Rights Act* filed with the Commission as prescribed by the *Act*.

The Commission is a non-taxable entity under the provisions of the federal *Income Tax Act*.

2. Summary of Significant Accounting Policies

Basis of Accounting

The financial statements for the year ended March 31, 2012, have been prepared in accordance with Canadian generally accepted accounting principles for the public sector. Prior period financial statements were prepared in accordance with Canadian generally accepted accounting principles for the private sector. The adoption of public sector accounting standards has been applied retroactively. The application of the new accounting framework did not affect previously reported results. Impacts on the financial statements were limited to presentation and disclosure.

The following accounting policies are considered significant.

a) Accounts Receivable

Accounts receivable are recorded at cost less any provision when collection is in doubt.

b) Prepaid Expenses

Prepaid expenses include memberships and subscriptions and are charged to expense over the periods expected to benefit.

c) Tangible Capital Assets

Tangible capital assets are recorded as non-financial assets provided thresholds for capitalization are met. Tangible capital assets not meeting approved thresholds are expensed.

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED MARCH 31, 2012

2. Summary of Significant Accounting Policies (continued...)

d) Revenues

Revenues are recognized in the period in which the transaction or event that gave rise to the revenue occurred. Revenues are recorded on an accrual basis, except when the accruals cannot be determined with a reasonable degree of certainty or when their estimation is impracticable.

Transfers (revenues from non-exchange transactions) are recognized as revenue when the transfer is authorized, any eligibility criteria are met and reasonable estimates of the amounts can be made. Transfers are recognized as deferred revenue when amounts have been received but not all eligibility criteria have been met.

e) Expenses

Expenses are recorded on an accrual basis in the period in which the transaction or event that gave rise to the expense occurred.

3. Accounts Payable and Accrued Liabilities

	2012 $	2011 $
Accounts payable	4,801	7,048
Accrued salary and benefits	35,707	11,989
	40,508	19,037

4. Related Party Transactions

The Commission had the following transaction with the Province of Prince Edward Island:

	2012 $	2011 $
Grants from the Province	399,075	352,300

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED MARCH 31, 2012

5. Contractual Obligations

The Commission has entered into a number of multi-year contracts which will become liabilities in the future when the terms of the contracts are met. Disclosure relates to the unperformed portion of the contracts.

	2013 $	2014 $	2015 $	2016 $	2017 $
Future operating lease payments	24,032	24,032	24,032	24,032	7,274

6. Commissioner Per Diems

Commissioner per diems include panels of inquiry, meetings, educational presentations, training and seminars and other Commission business.

7. Employee Benefits

a) Sick Leave

All employees are credited 1.25 days per month for use as paid absences in the year, due to illness or injury. Under existing employment agreements, employees are allowed to accumulate unused sick day credits each year, up to the allowable maximum. Accumulated credits may be used in future years to the extent that the employee's illness or injury exceeds the current year's allocation. The use of accumulated sick days for sick-leave compensation ceases on termination of employment and there is no obligation to settle these amounts with cash payments. A liability has not been calculated and no accrual has been recorded in these financial statements.

b) Pension Benefits

Employees of the Commission participate in a defined contribution pension plan. The Commission makes contributions amounting to 6.95 percent on that part of the salary on which Canada Pension Plan contributions are made and 8.75 percent on salary when Canada Pension Plan contributions are not required. The employee is not required to match or contribute to the plan. These contributions are paid to a Registered Retirement Savings Plan (RRSP) or Registered Disability Savings Plan (RDSP) as selected by the employee.

During the year, the Commission incurred $16,122 (2011 - $15,173) in expenses for contributions to these plans.

PRINCE EDWARD ISLAND

HUMAN RIGHTS COMMISSION

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED MARCH 31, 2012

7. Employee Benefits (continued...)

c) Retirement Allowances

The Commission provides a retirement allowance to its permanent employees. The amount paid to eligible employees at retirement is based on the number of years of service and the rate of pay in effect at the retirement date. The benefit costs and liabilities related to the allowance are not included in these financial statements.

8. Statement of Cash Flow

A statement of cash flow has not been prepared as the required cash flow information is readily apparent from the other information included in these financial statements.

9. Budgeted Figures

Budgeted figures have been provided for comparative purposes and were derived from estimates approved by the Commission.

Prince Edward Island Human Rights Commission

The Prince Edward Island Human Rights Commission is an independent body that investigates, attempts to settle and makes rulings on complaints of discrimination that fall under the Prince Edward Island *Human Rights Act*

For more information, please contact us

In Person:
53 Water Street
Charlottetown PE C1A 1A3

By Mail:
Prince Edward Island Human Rights Commission
PO Box 2000
Charlottetown PE C1A 7N8

By Phone:
(902)368-4180 or
1-800-237-5031
(toll-free within Prince Edward Island)

By Fax:
(902)368-4236

By E-mail:
lbuell@peihumanrights.ca

or visit our website:
www.peihumanrights.ca